

**MINUTES
BOARD OF ADJUSTMENT
CITY HALL COUNCIL CHAMBERS
116 W. NEEDLES AVE.
BIXBY, OK 74008
March 02, 2015 6:00 PM**

In accordance with the Oklahoma Open Meeting Act, Title 25 O.S. Section 311, the agenda for this meeting was posted on the bulletin board in the lobby of City Hall, 116 W. Needles Ave., Bixby, Oklahoma on the date and time as posted thereon, a copy of which is on file and available for public inspection, which date and time was at least twenty-four (24) hours prior to the meeting, excluding Saturdays and Sundays and holidays legally declared by the State of Oklahoma.

STAFF PRESENT:

Erik Enyart, AICP, City Planner
Patrick Boulden, Esq., City Attorney

ATTENDING:

See attached Sign-in Sheet

CALL TO ORDER

Meeting called to order by Chair Jeff Wilson at 6:03 PM.

ROLL CALL

Members Present: Jeff Wilson, JR Donelson, Larry Whiteley, Murray King, and Darrell Mullins.

Members Absent: None.

MINUTES

1 Approval of Minutes for February 02, 2015

Chair Jeff Wilson introduced the item and asked to entertain a Motion. Murray King made a MOTION to APPROVE the Minutes of February 02, 2015 as presented by Staff. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: King, Wilson, Whiteley, Donelson, & Mullins

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 5:0:0

OLD BUSINESS

Chair Jeff Wilson asked if there was any Old Business to consider. Erik Enyart stated that he had none. No action taken.

NEW BUSINESS

2. **BBOA-598 – Rob Bunch for R.K.B. Properties, LLC.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7C-2 Table 1 to allow one (1) Use Unit 6 single-family dwelling per lot for both Lots 16 and 17, Block 1, *Devine-Ellard Addition*, located within the OL Office Low Intensity District.
Property located: 101 & 103 W. Stadium Rd.

Chair Jeff Wilson introduced the item and called on Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the Staff Report as follows:

To: Bixby Board of Adjustment
From: Erik Enyart, AICP, City Planner
Date: Monday, February 23, 2015
RE: Report and Recommendations for:
BBOA-598 – Rob Bunch for R.K.B. Properties, LLC

LOCATION: – 101 & 103 W. Stadium Rd.
– Lots 16 and 17 (Less right-of-way), Block 1, Devine-Ellard Addition
LOT SIZE: 0.4 acres, more or less
ZONING: OL Office Low Intensity District
REQUEST: Special Exception per Zoning Code Section 11-7C-2 Table 1 to allow one (1) Use Unit 6 single-family dwelling per lot for both Lots 16 and 17, Block 1, Devine-Ellard Addition, located within the OL Office Low Intensity District

SURROUNDING ZONING AND LAND USE:

North: RS-3; The St. Clement of Rome Catholic Church on a 9.5-acre campus and single-family residential along W. Bixby St. in Ramsey Terrace and the [Original Town of] Bixby.
South: CS, RD, & RS-3; Vacant commercial lots in Block 3 of Devine-Ellard Addition. To the southeast is single-family residential along Rachel St. zoned RS-3, and farther south across Rachel St. is the South Town Nursing & Rehabilitation facility at 76 W. Rachel St. (perhaps also 14625 S. Memorial Dr.) zoned RD, all in Devine-Ellard Addition.
East: RS-3; Single-family residential along Stadium Rd. and to the southeast along Rachel St., all in Devine-Ellard Addition; a single-family dwelling, under construction on the lot abutting to the east, is being constructed by the Applicant.
West: CS; Vacant commercial lots in Block 1 of Devine-Ellard Addition. Farther west across Memorial Dr. are houses and vacant commercial areas zoned CS.

COMPREHENSIVE PLAN: Development Sensitive + Residential Area

PREVIOUS/RELATED CASES:

BZ-25 – Irvin & Louise Ellard – Request for rezoning from RS-3 to CS for “business” for Lots 16 : 20, inclusive, Block 1, Devine-Ellard Addition (including subject property and 3 lots abutting to the west) – PC recommended Approval of CS zoning for the western 3 lots and OL zoning for the subject property 04/29/1974 and Board of Trustees Approved CS and OL zoning as recommended 05/07/1974 (Ord. # 275 dated 06/18/1974).

RELEVANT AREA CASE HISTORY: (not a complete list; does not include cases west of Memorial Dr.)
BBOA-176 – Steve Todoroff – Request for (1) Special Exception to allow a carport, (2) Variance from the 50’ setback from the centerline of Stadium Rd., and (3) Variance from the all-weather, dust

free parking surface requirement for property located 1 block to the east of subject property at 26 W. Stadium Rd. – BOA Approved 09/08/1986.

BBOA-238 – Vera Young – Request for (1) Special Exception to allow a carport and (2) Variance from the setback from the centerline of Bixby St. from 50' to 32' for property located to the north of subject property at 24 W. Bixby St. – BOA Approved 05/06/1991.

BZ-218 – Red & Betty Stevenson – Request for rezoning from CS to RM-3 for senior citizens' apartments for Lots 7 : 10, inclusive, Block 3, Devine-Ellard Addition to the south of subject property across Stadium Rd. – Withdrawn by Applicant 02/19/1996.

BBOA-316 – Edward Davis – Request for (1) Special Exception to allow a muffler shop in the CS district and (2) a 10' Variance from the 150' Arterial Street frontage requirement for Lots 1 : 4, inclusive, Block 3, Devine-Ellard Addition to the south of subject property across Stadium Rd. – BOA Denied 05/06/1996.

BZ-221 – Edward Davis – Request for rezoning from CS to CG for a muffler shop for Lots 2, 3, and 4, Block 3, Devine-Ellard Addition to the south of subject property across Stadium Rd. – PC Recommended Denial 06/17/1996 and either Denied or not appealed to City Council.

BZ-285 – Rev. Daniel Muggenberg for St. [Clement of Rome] Catholic Church – Request for rezoning from RS-3 to CG to allow for sale for commercial use for the St. Clement of Rome Catholic Church campus of 9.5 acres abutting subject property to the north – PC (06/17/2002) Continued to a date uncertain “to consider the possibility of a PUD.” No record found of further consideration.

BBOA-581 – Steve Olsen for St. Clement of Rome Catholic Church – Request for Special Exception per Zoning Code Section 11-7B-2 Table 1 to allow an existing Use Unit 5 church in an RS-3 Residential Single-Family District, in order to allow for a building expansion for the St. Clement of Rome Catholic Church campus of 9.5 acres abutting subject property to the north – BOA Conditionally Approved 08/05/2013.

BACKGROUND INFORMATION:

The Applicant also owns vacant Lots 18, 19, and 20 (Less & Except right-of-way), Block 1, Devine-Ellard Addition, abutting to the west and zoned CS, and Lot 15 (Less & Except right-of-way), Block 1, Devine-Ellard Addition abutting to the east and zoned RS-3. On Lot 15, a single-family house is under construction. All lots contain some amount of 100-Year (1% Annual Chance) Regulatory Floodplain, and must comply with the Bixby Floodplain Regulations. The house under construction to the east has been permitted in compliance with the Floodplain Regulations.

ANALYSIS:

Property Conditions. The subject property consists of two (2) lots, Lots 16 and 17 (Less right-of-way), Block 1, Devine-Ellard Addition, both zoned OL Office Low Intensity District. Located west of Louise Ave., Lot 16 is addressed 101 W. Stadium Rd., and Lot 17 is addressed 103 W. Stadium Rd. Each contains approximately 0.2 acres in lot area.

The subject property lots are both vacant, and both were originally platted as rectangular lots having 140' in lot depth and 62.5' of frontage on Stadium Rd. Both have since, however, had right-of-way acquired from them, evidently as a part of the Stadium Rd. and Memorial Dr. intersection and signalization improvement some years ago. Lot 17 now has a lot depth of 125.85', and Lot 16, with angled frontage on the widened right-of-way, has an average depth of 129.42'. The subject property lots appear to drain southerly to the borrow ditches along Stadium Rd., which ultimately drain south to Bixby Creek.

Special Exception Request. The Applicant is requesting a Special Exception per Zoning Code Section 11-7C-2 Table 1 to allow one (1) Use Unit 6 single-family dwelling per lot for both Lots 16 and 17, Block 1, Devine-Ellard Addition, located within the OL Office Low Intensity District. The Applicant has provided a project narrative, survey, and photograph of the house under construction on adjacent Lot 15. It is understood that the proposed houses on the subject property lots would be of similar construction design and quality. This can be made a Condition of Approval.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Development Sensitive and (2) Residential Area.

The Special Exception requests approval for one (1) Use Unit 6 single-family dwelling per lot for both lots in the OL District. The same effect could be achieved by rezoning the lots to an RS district, most likely RS-3. However, Staff considered that rezoning would not be as appropriate as a Special Exception allowing single-family house construction with Conditions of Approval appropriate for the site. Secondly, Staff considers the existing zoning pattern to be the most appropriate for the concerned

properties: CS zoning and potential commercial use along Memorial Dr. and OL zoning for the subject property buffering RS-3 zoning and single-family use to the east. Upon researching the Zoning history of the subject property (BZ-25 – Irvin & Louise Ellard), Staff found that the OL district was specifically designed, by Staff and Planning Commission recommendation and Board of Trustees approval, to serve as a buffer between the commercial to the west and single-family residential to the east. Finally, rezoning also triggers additional planning and development exercises which may be excessive due to the limited scale of the infill house construction proposed for these existing platted lots. Since the zoning/land use approval as requested here would be similar to rezoning to RS-3, the Comprehensive Plan's "Matrix to Determine Bixby Zoning Relationship to the Bixby Comprehensive Plan" ("Matrix") on page 27 of the Comprehensive Plan can be used to inform this land use decision.

The Development Sensitive designation appears to correspond to the 100-year (1% Annual Chance) Regulatory Floodplain. Floodplain areas may sometimes have soils which are not naturally conducive to construction, and may require remedial soil chemical work and/or special construction methods. In this case, the depth of flooding may be so shallow that onsite modifications, complying with Compensatory Storage requirements, may allow for the houses to be built at the required one (1) foot above the 100-year Base Flood Elevation using a slab-on-grade foundation design, as was done with the house under construction on Lot 15 abutting to the east. Otherwise, the houses may be required to be constructed on an elevated, flow-through foundation with openings sized to meet FEMA specifications for same. This will ensure (1) the First Finished Floor of the houses would be at least one (1) foot above the 100-year Base Flood Elevation, and (2) the area underneath the floor will allow the water underneath the structure during flooding, so as not to displace floodwaters onto other properties. These are required by FEMA and City of Bixby Floodplain Regulations.

The "Matrix" on page 27 of the Comprehensive Plan provides that RS-3 zoning (a proxy for single-family dwelling use) May Be Found In Accordance with the Development Sensitive designation of the Comprehensive Plan Land Use Map.

Page 7, item numbered 1 of the Comprehensive Plan states:

"The Bixby Comprehensive Plan map depicts desired land uses, intensities and use and development patterns to the year 2020. Intensities depicted for undeveloped lands are intended to develop as shown. Land uses depicted for undeveloped lands are recommendations which may vary in accordance with the Intensities depicted for those lands." (emphasis added)

This language is also found on page 30, item numbered 5.

This text introduces a test to the interpretation of the Comprehensive Plan Land Use Map, in addition to the Matrix: (1) If a parcel is within an area designated with a specific "Land Use" (other than "vacant, agricultural, rural residences, and open land," which cannot be interpreted as permanently-planned land uses), and (2) if said parcel is undeveloped, the "Land Use" designation on the Map should be interpreted to "recommend" how the parcel should be zoned and developed. Therefore, the "Land Use" designation of the Comprehensive Plan Land Use Map should also inform/provide direction on how rezoning applications should be considered by the Planning Commission and City Council.

Staff believes that RS-3 zoning would be, and the proposed single-family residential use is consistent with the Residential Area land use designation of the Comprehensive Plan Land Use map.

Surrounding Zoning and Land Use. To the north of the subject property is the St. Clement of Rome Catholic Church on a 9.5-acre campus and single-family residential along W. Bixby St. in Ramsey Terrace and the [Original Town of] Bixby, all zoned RS-3.

Across Stadium Rd. to the south of the subject property are vacant commercial lots in Block 3 of Devine-Ellard Addition (between Stadium Rd., Louise Ave., Rachel St., and Memorial Dr.). To the southeast is single-family residential use along Rachel St. zoned RS-3 in Devine-Ellard Addition. Farther south across Rachel St. is the South Town Nursing & Rehabilitation facility at 76 W. Rachel St. (perhaps also 14625 S. Memorial Dr.) zoned RD in Devine-Ellard Addition.

Abutting to the east is a single-family dwelling, Lot 15, Block 1, Devine-Ellard Addition, under construction by the Applicant. Farther east and southeast of the subject property is single-family residential use along Stadium Rd. and Rachel St., all in Devine-Ellard Addition.

West of the subject property are vacant commercial lots in Block 1 of Devine-Ellard Addition, also owned by the Applicant. Farther west across Memorial Dr. are houses and vacant commercial areas zoned CS.

Staff believes that the proposed single-family dwelling use would be compatible and consistent with surrounding zoning and land use patterns.

If single-family houses are constructed on the subject property, the intent of the OL district buffer (and likely office use) will have been lost. However, the Applicant owns all the concerned lots, and has evidently determined the current market sees the highest and best use to be single-family residential. The Applicant should know also that constructing single-family residential on the subject property may cause future commercial entitlements on the Applicant's commercial lots to be subject to higher standards for buffering and otherwise in respect to established residential uses. When the CS-zoned lots are developed commercial, and as the neighborhood evolves through time, the OL-zoned dwellings may be converted to office uses, which would then serve the buffering needs as originally intended. The official Zoning Map is due notice to the Public of the land uses which different properties may be used for now, and developed for in the future.

The Zoning Code requires screening and other buffering measures be employed when commercial is being developed abutting an R district. However, it does not require the same buffering when abutting OL zoning. Thus, Staff believes a minimum 6'-tall opaque screening fence should be erected on the west line of Lot 17, when a house is constructed thereon, to screen from future commercial, and to buffer the noise and other effects produced by traffic on Memorial Dr. / U.S. Hwy 64 in the interim. See recommendations for details.

Almost all of the houses along Stadium Rd. in Devine-Ellard Addition appear to be full brick, and the house under construction on adjacent Lot 15 is a brick house as well. Staff recommends that approval be conditioned upon the new houses being compatible with surrounding brick houses, by being in substantial conformance to the design and quality of the house under construction on Lot 15 to the east. See recommendations for details.

Staff Recommendation. Due to the Comprehensive Plan and surrounding zoning and land use patterns, and for all the other reasons outlined above, Staff recommends Approval subject to:

- (1) The house plans must substantially conform to the design and quality of the house under construction on Lot 15, meaning within 15% of house size and masonry content,*
- (2) The houses shall comply fully with the Floodplain Regulations, and*
- (3) A minimum 6'-tall opaque screening fence or wall shall be erected along the west line of Lot 17, at the time of house construction thereon, to serve as a screening fence to future commercial, and from Memorial Dr. / U.S. Hwy 64 in the interim, and continued maintenance in good condition shall be a continuing condition of occupancy of the dwelling on Lot 17.*

Erik Enyart noted that he had not yet had a chance to communicate the recommended Conditions of Approval with the Applicant. After reading same, Applicant Rob Bunch indicated he was okay with all of them.

A Board member clarified with Erik Enyart that there would be two (2) houses constructed, one (1) on each lot.

Erik Enyart noted that, of all the questions he had received by phone call and one drop-in customer, all seemed to be satisfied when he had explained to them that the Applicant was proposing to construct single-family houses on the two (2) lots, and that they would be similar to the house under construction now on the lot to the east. Mr. Enyart stated that, of all the inquiries he had had which expressed any opinion, the lady owing the house to the east of the house under construction expressed that she and her husband were in favor of this application. Mr. Enyart stated that he had heard of no objections to this application.

Murray King and JR Donelson asked Erik Enyart what the fence recommendation was for. Mr. Enyart stated that commercial developments are required to put up a screening fence when they abut residential properties, but in this case, the property was zoned OL office, so when a business would be constructed, it would not be required to put up a fence. Mr. Enyart stated that the fence

would serve as a screening fence to the future commercial and, in the interim, from the noise and such that traffic produce on Memorial Dr.

Discussion ensued regarding the necessity of the screening fence recommendation. A Board member confirmed with Rob Bunch that he owned all the lots [in this block] to Memorial Dr. Larry Whiteley asked if the Board could require that the screening fence be put up by the commercial development when it developed. Erik Enyart stated that he did not think it would be legal for the Board to encumber another property with a requirement, since the only lots under consideration were the subject property lots. Mr. Bunch indicated he would rather not have to put up the fence with the house and would be willing to do this when the commercial lots developed. Mr. Whiteley reiterated his question. Mr. Enyart reiterated his response but stated that, if the Applicant was the one to develop the property and agreed to put up the fence, the Board could take the Applicant's statement into consideration.

Murray King asked Erik Enyart why his second recommendation was to comply with the Floodplain Regulations, since that would be a requirement anyway to get a Building Permit. Mr. Enyart responded that it was customary in these types of situations. Mr. King asked why the Board should have to require this, and Mr. Enyart responded, "You don't have to."

After further discussion, JR Donelson confirmed with Murray King that it was his preference to Approve the application with only the first recommended Condition of Approval, and that Mr. King would like to make that his Motion.

Murray King made a MOTION to APPROVE BBOA-598 subject to (1) The house plans must substantially conform to the design and quality of the house under construction on Lot 15, meaning within 15% of house size and masonry content. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	King, Wilson, Whiteley, Donelson, & Mullins
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	5:0:0

ADJOURNMENT

Chair Jeff Wilson asked to entertain a Motion to Adjourn. Larry Whiteley made a MOTION to ADJOURN. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	King, Wilson, Whiteley, Donelson, & Mullins
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	5:0:0

Meeting was Adjourned at 6:14 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary